Corporate Center
155 Chestnut Ridge Road
Montvale, NJ 07645-0445 USA

ingersollrand.com

Ingersoll Rand

October 20, 2006

Evette Jones
U.S. Environmental Protection Agency
Remedial Enforcement Support Section
77 W. Jackson Blvd., SR-6J
Chicago, IL 60604-3590

Re: Request for Information Pursuant to Section 104(e) of CERCLA
Residential Portion - USS Lead Site
5300 Kennedy Ave, East Chicago, Indiana

Dear Ms. Jones:

Kindly accept this letter in response to EPA's September 5, 2006 letter ("Letter") addressed to Ingersoll-Rand Company ("Ingersoll-Rand") regarding the above referenced site. Please be advised that Aaron Kleinbaum is Ingersoll-Rand Company's Environmental Counsel. I work with Mr. Kleinbaum as Environmental Paralegal and as such, I will be the contact person in this matter. Kindly forward all correspondence to my attention at the above address.

The Letter requests information about the Blaw-Knox Foundry & Mill which operated for over 50 years at a facility located at 4407 Railroad Avenue, East Chicago, Illinois. It goes on to state that the EPA "understands that Ingersoll-Rand is the successor-in-interest to Blaw-Knox [Foundry & Mill]". This understanding is incorrect an Ingersoll-Rand has no information about Blaw-Knox Foundry& Mill or the property.

In April 1994, Clark Equipment Company ("Clark") purchased all outstanding shares of capital stock of Blaw-Knox Construction Equipment Corporation ("BK"), a Delaware corporation and certain rights, properties and assets of Blaw-Knox Construction Equipment Co. Limited ("BKL") a United Kingdom agency company, both wholly owned subsidiaries of White Consolidated Industries, Incorporated. In 1995, Ingersoll-Rand acquired Clark.

After careful review of the 1994 Clark/BK and BKL transaction documents, we have determined that the real property included in Clark's acquisition of BK and BKL was a facility in Mattoon, Illinois and other property in the U.K. The only assumed liabilities of BK and BKL were related to the

Mattoon, Illinois and U.K. businesses. The Blaw-Knox Foundry & Mill business and property located at 4407 Railroad Avenue, E. Chicago, Indiana was not purchased by Clark or Ingersoll-Rand. This information was obtained through a diligent search of our corporate records, including the aforementioned transaction documents, and a discussion of a current Ingersoll-Rand employee who was employed by Clark at the time Clark acquired BK and BKL.

Consequently Ingersoll-Rand does not possess information about operations conducted at the Blaw Knox Foundry & Mill. Should you obtain documentation which substantiates Clark's involvement with this Site or with Blaw-Knox Foundry & Mill, kindly forward them to me and we will continue to search our files for any records and supplement this response, if necessary.

If you have any questions or require additional information, kindly contact me at 201-573-3372.

Very truly yours,

Donna K. Bryant McMahon
Environmental Paralegal

x5520 Dave Herm
Shutterstock

Blaw Knox Foundry + Mill
4407 Railroad Ave, E Chicago
PRP

Acquisition + Sale Agreement (E
acquired all stock of BK + certain
business assets of BKC 4/20/04

Electrolux parent → Ultra
Consolidated Industries → sold
subsidiaries: Blaw-Knox Construction
Equipment Corp (BK) + parts of
Blaw-Knox Const. Equip Ltd
(UK) (BKC)

Assumed Liabilities →
BK shall be responsible for the assumed liabilities for BK
BKL assumed liabilities s/b responsibility of entity designated by buyer

Excluded Liabilities: applicable to BK s/b assumed by WCI at or prior to the closing:

- whether contingent, absolute, known or unknown

Blaw-knox Foundry, 646 F.2d 116
Iron & Steel Engineer 7/97

5/21/97, LQWS
Rich Mulbar → no knowledge of Clark/Blaw Knox/IR pump business — not asset being part of that acquisition

Zero Allocations Under CERCLA

By: Douglas A. McWilliams[1]

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Daily Environment Report, No. 53, pp. B-1 to B-5 (March 19, 2002).
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I. INTRODUCTION

The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") is notorious for its unforgiving liability scheme. With very few exceptions, any party who sent any amount of any hazardous substance is jointly and severally liable for cleanup costs with every other party connected to the site as a generator, transporter, owner or operator. Congress apparently intended to cast the net broadly to ensnare enough viable companies to ensure payment of cleanup costs. This broad net inevitably catches some parties who have little, if any, connection to the underlying reason cleanup was required in the first place. For these parties, the last hope for a just result may be the discretion of the district court judge to rule that they are entitled to a zero allocation of the cleanup costs.

Most zero-allocation candidates will be defendants in a contribution action brought by other liable parties who are seeking reimbursement for cleanup costs that they have incurred at a site. *See, e.g., Acushnet v. Mohasco*, 191 F.3d 69, at 73, 49 ERC 1136 (1st Cir. 1999); *Kalamazoo River Study Group v. Rockwell*, 274 F.3d 1043, 53 ERC 1705 (6th Cir. 2001); *Ninth*

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[1] Douglas A. McWilliams practices in the Environmental Law Section of the Advocacy Practice Group in the Cleveland, Ohio office of Squire, Sanders & Dempsey L.L.P. Mr. McWilliams was part of a Squire Sanders trial team led by Dale E. Stephenson and Vincent Atriano that won a zero allocation for its client, White Consolidated Industries, Inc. ("WCI") in *Ninth Avenue Remedial Group v. Allis-Chalmers Corp.* 53 ERC 2101 (N.D. Ind. 2001). Founded in 1890 in Cleveland, Ohio, Squire Sanders is an international law firm with more than 750 attorneys in 28 offices throughout the world. To contact the author or his firm, call 1.216.479.8500 or access WWW.SSD.COM.

Avenue Remedial Group v. Allis-Chalmers Corp., 53 ERC 2101 (N.D. Ind. 2001). The plaintiffs, through settlement or compulsory order, typically incurred cleanup costs implementing U.S. EPA's chosen remedy for the site. CERCLA's joint and several liability scheme allows the government to pursue enough viable parties to fund the cleanup and then move on to the next site. The equitable allocation of cleanup costs is largely accomplished through the performing parties' contribution claims under CERCLA § 113 against potentially responsible parties (PRPs) that the performing parties choose to target for cost recovery. The federal district court judge hearing the contribution claim becomes charged with the task of allocating costs equitably among the liable parties.

Subsequent owners have also received zero allocations. Innocent landowners may now escape liability completely if they did not cause, contribute, or consent to the release or threatened release at the site.[2] However, many subsequent landowners do not qualify for such statutory liability relief because they contributed some minor amount of a hazardous substance during their tenure. These liable owners may nonetheless be eligible for a zero allocation if their relative contribution to the site is miniscule compared with other viable PRPs. *See, e.g., PMC Inc. v. Sherwin-Williams Co.*, 151 F.3d 610, at 616, 47 ERC 1185 (7th Cir. 1998), *cert. denied* 525 U.S. 1104, 48 ERC 1096 (1999); *Dent v. Beazer Materials & Services Inc.*, 156 F.3d 523, 45 ERC 2089 (4th Cir. 1998); *Gopher Oil v. Union Oil Co. of California*, 955 F.2d 519, 34 ERC 1709 (8th Cir. 1992).

District courts that have taken the bold step to allocate zero shares have been rarely reversed on appeal. In part, this is due to CERCLA's statutory language: "In resolving

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[2] *See* H.R. 2869 amending in part CERCLA § 107(b)(3), 42 U.S.C. § 9607(b)(3). Statutory liability defenses are also available for lenders (*see* 42 U.S.C. § 9601(20)(E)), some scrap material recyclers (*see* 42 U.S.C. § 9627), and certain small businesses and prospective purchasers (H.R. 2869).

contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate." CERCLA § 113(f)(1), 42 U.S.C. § 9613(f)(1). Appellants have a difficult time demonstrating judicial error with the broad discretion Congress afforded to the allocating judge under the statute. Also, allocating costs is a fact-driven process involving consideration of relative volume, toxicity, culpability, "remedy drivers", etc. Circuit Courts typically defer to the judge who heard the evidence first hand on such issues of fact. Despite this deference, zero allocations remain rare, seemingly reserved for the most effective presentations of the relative insignificance of a defendant's contributions to a site.

Given the district court's broad and unfettered discretion, where should the line be drawn for allocating a zero share to a liable party? Consider the following scenarios:

1. Should a company that sent only foundry sand to a hazardous waste dump share in the cost of containing and treating oil and other hazardous liquids?

2. Should a company that released 10,000 times less PCB oil than the plaintiff parties help pay for the PCB cleanup?

In the first scenario (the "Foundry Sand Case"), the Court is faced with distinctly different contributions – one party who sent solid waste and the plaintiffs who sent liquid wastes. The second scenario (the "PCB Case") involves similar waste material but vastly different quantities contributed. Confronted with these and other fact scenarios depicting disparate contributions among the litigants, judges have used their equitable discretion under CERCLA § 113 to allocate zero shares of response costs to liable defendants. The decisions, some of which have already been affirmed on appeal, provide a foundation upon which defense counsel should feel emboldened to reach for the brass ring: the zero allocation under CERCLA.

II. THE FOUNDRY SAND CASE

On August 30, 2001, U.S. District Court Judge Lozano of the Northern District of Indiana, decided that a defendant who supplied foundry sand to the Ninth Avenue Dump Site in Gary, Indiana should be allocated none of the CERCLA response costs. The Site was used by a hazardous waste hauler as an illegal dumping area for approximately 40 million gallons of oils, solvents, and other liquid chemicals from 1973-1975. When a fire alerted the State of Indiana to the dumping activities in August 1975, the site operator was instructed by State officials to immediately cease all disposal activities and cover the area with an approved inert material. Foundry sand was that inert material.

Blaw Knox operated a steel foundry in East Chicago, Indiana that made large castings for M-60 tanks. The sand used to make molds for shaping the molten metal was fortified with binders, and some of those binders contained constituents that are now considered hazardous substances under CERCLA. The State of Indiana approved this foundry sand for use at the Ninth Avenue Dump Site after reviewing a laboratory analysis that detected 18 parts per billion (ppb) of phenol and an unquantifiable trace of furan in the foundry sand leachate. Truckloads of foundry sand were sent to the Site in 1976 to cover and level the Site.

Much later, U.S. EPA determined that this Site was a national priority for cleanup and issued CERCLA § 106 orders to force PRPs to cleanup the Site. As often happens, a group of companies formed a PRP group and conducted the required remediation. Cleanup costs incurred at the Site exceeded $32 million. In 1994, the performing PRPs, the Ninth Avenue Remedial Group, initiated cost recovery lawsuits under CERCLA §§ 107 and 113 against nearly 100 potentially responsible parties who were not participating in the cleanup. In June 1996, the

Plaintiffs amended their complaint to add White Consolidated Industries, Inc. (WCI), the owner and operator of the Blaw-Knox foundry during the relevant time period.

Plaintiffs survived a motion to dismiss, a motion for summary judgment, and the first phase of a bifurcated trial at which WCI was found liable. While WCI's counsel pursued a unique CERCLA liability defense, a finding of liability ultimately proved unavoidable since the foundry sand that was sent to the Site admittedly contained trace levels of a CERCLA hazardous substance.[3] Ironically, the same test that the State relied upon to approve Blaw Knox foundry sand as the inert cover for the Site in 1976 was used to prove that the foundry sand contained a hazardous substance sufficient to warrant CERCLA liability. During the allocation phase of trial, Plaintiffs' alleged that WCI's foundry sand was far and away the largest volume waste at the Site. Plaintiffs then proposed that the Court allocate costs primarily based on volume as a simple approach favored by many courts when faced with complex mixtures of hazardous wastestreams.[4] Plaintiffs' volumetric theory would have allocated to WCI $11 million of the site response costs plus interest. At the close of Plaintiffs' case, WCI's counsel submitted a Motion for Judgment on Partial Findings under Federal Rule of Civil Procedure 52(c), in which it argued for a zero allocation.[5]

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[3] WCI's unique statutory defense was premised on CERCLA § 107(d), which excuses any person from liability for actions taken rendering care or assistance in accordance with the National Contingency Plan or at the direction of an onscene coordinator. While WCI's foundry sand was used to implement a state-required remedy, the Court found insufficient evidence to support the 107(d) defense at the end of the liability trial.

[4] In fairness, Plaintiffs tried to present an allocation expert to support a more complicated allocation scheme that tied wastes to remedial activities. However, WCI's counsel successfully challenged this expert as failing to meet the minimum criteria for reliability under Federal Rule of Evidence 702 as amplified by *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and *Kumho Tire Co. v. Carmichael*, 119 S. Ct. 1167 (1999). Though qualified as an expert, the Court found the expert's allocation methodology lacked the objective elements necessary for reliable and admissible expert testimony.

[5] A judgment on partial findings allows a judge in a bench trial to enter judgment as a matter of law at the close of Plaintiffs' case on any claim for which Plaintiffs have failed to carry their burden. In the Foundry Sand Case, a zero allocation was ripe for Rule 52(c) disposition because the Plaintiffs failed to demonstrate that WCI's contribution to

WCI's prevailing argument was built on Seventh Circuit cases that support a zero allocation under certain facts. In *PMC v. Sherwin-Williams*, the Seventh Circuit affirmed a zero allocation stating, "PMC's spills may have been too inconsequential to affect the cost of cleaning up significantly, and in that event a zero allocation to PMC would be appropriate. That was the district judge's judgment, and we cannot say that it was unreasonable." *PMC*, 151 F.3d at 616 (internal citations omitted). PMC, the current owner, admittedly contributed some contamination to the site that others had owned and polluted for over a century. The district court determined, and the Seventh Circuit affirmed, that the relative contribution by PMC was too inconsequential to significantly affect cleanup costs. Sherwin-Williams was directed to pay 100% of past and future response costs. PMC received a zero allocation. Relying on *PMC*, WCI argued that its contribution of hazardous substances was also too inconsequential to affect cleanup costs. While WCI's foundry sand represented a large volume of waste at the Site, WCI's contribution of hazardous substances from all of that foundry sand was calculated to be less than one gallon of phenol. Compared with the millions of gallons of hazardous liquids contributed by plaintiffs, WCI argued that its contribution was sufficiently inconsequential to warrant a zero allocation.

A zero allocation was also supported by the Seventh Circuit's guidance for equitable allocations set forth in *Akzo Nobel Coatings Inc. v. Aigner Corp.*, 197 F.3d 302, 49 ERC 1609 (7th Cir. 1999). While this case did not conclude with a zero allocation, the Seventh Circuit established "floor" and "ceiling" boundaries for allocating response costs that dictate zero allocations under certain facts. The "ceiling" is based on the premise that a party should pay no more than the cost it would have paid had its waste been present alone at the site. The "floor" is based on the premise that a party should pay no less than the incremental increase in cleanup

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the Site affected clean up costs. However, as expressly allowed in the rule, Judge Lozano declined to render judgment on WCI's Rule 52(c) motion until the close of all the evidence.

costs that can be attributed to the presence of its waste at the site. *Akzo* at 305. Thus, even if the waste alone would not cause cleanup costs, the party should still contribute toward the cleanup costs to the extent that the presence of the waste at the site made cleanup more costly.

The Seventh Circuit further refined this analysis in *Browning-Ferris Industries v. Ter Maat,* 195 F.3d 953, at 958-59, 49 ERC 1449 (7th Cir. 1999). The *Akzo* floor and ceiling are less clear when a collection of wastes, none of which would necessitate response costs on their own, nonetheless creates a sufficient mess to require cleanup when combined. *See Browning Ferris* at 958. In this situation, the *Akzo* boundaries may not be used to allocate zeros to all parties who were not a necessary cause of cleanup costs. Instead, a defendant hoping for a zero allocation must also show that the cleanup costs were being driven by the presence of another party's waste.

Applied to the Foundry Sand Case, the Seventh Circuit's guidelines supported a zero allocation. First, WCI should pay no more than the costs to cleanup foundry sand alone. WCI presented evidence that foundry sand was located in areas of the Ninth Avenue Site where U.S. EPA did not require any cleanup. Since this foundry sand was sampled, analyzed, and deemed clean enough to stay outside of the engineered containment area, the Court concluded that no costs would have been incurred to clean up foundry sand alone. Thus, WCI should pay no more than zero, the applicable CERCLA cost allocation ceiling.

The Seventh Circuit's allocation floor also supported a zero share because the presence of foundry sand did not cause an incremental increase in cleanup costs at the Site. Plaintiffs attempted to demonstrate that WCI's foundry sand made it more difficult to clean up the Site, because it would have been easier to treat liquids before they became mixed with solid materials. WCI countered with evidence to demonstrate that the presence of foundry sand reduced the

amount of additional sand and fill material needed to support the cap at the Site. The Court concluded that WCI's foundry sand actually saved money by allowing Plaintiffs to purchase less fill material as they constructed the remedy.

> The uncontroverted evidence demonstrated that Blaw Knox's foundry sand actually saved response costs at the Site by decreasing the amount of additional sand that Plaintiffs needed to purchase in order to implement the final site remedy.

Ninth Avenue 53 ERC at 2110.

Ironically, WCI's position was aided by a change in remedy selection at the Site advocated by Plaintiffs. U.S. EPA originally chose to have all contaminated fill material excavated and burned to remove organic contaminants. Plaintiffs spent millions of dollars convincing EPA that a capped slurry wall containment system would be as effective, and far less costly, than the incineration option. As a major component of the fill material, the amount of foundry sand at the Site was closely related to the cost of the dig and burn remedy. However, when plaintiffs successfully lobbied for a remedy change, WCI's foundry sand went from being part of the material to be remediated to an integral part of the remedy. The foundry sand provided a foundation that significantly reduced the amount of additional sand and clay required to construct the cap. With this benefit, the marginal cost attributable to WCI's foundry sand was actually less than zero, leaving the district court without a floor to justify a minimum allocation of costs to WCI.

WCI also established through cross-examination of Plaintiffs' witnesses that the liquid wastes contributed by Plaintiffs necessitated the incurrence of the cleanup costs. WCI elicited testimony from Plaintiffs' witnesses and introduced evidence during cross examination to prove Plaintiffs' liquid wastes drove the remedy at the site. The liquids required the slurry wall

containment and the groundwater treatment systems. The cap covered only the areas where liquids affected the fill material, while untainted foundry sand was left uncovered. By the end of Plaintiffs' case, the Court had enough evidence to conclude that Plaintiffs' liquid wastes were the primary and necessary cause of response costs at the site.

Ultimately, the Court allocated a zero share of the cleanup costs to WCI based on the following: (1) The cost of cleaning up foundry sand alone was zero; (2) The incremental increase in costs as a result of the presence of foundry sand was less than zero (since it saved Plaintiffs the cost of purchasing additional fill); and (3) Foundry sand did not significantly contribute to the response costs required to cleanup Plaintiffs' liquid wastes. The Court concluded that the contribution of foundry sand was too inconsequential to warrant an allocation of costs. Plaintiffs' appeal to the Seventh Circuit was dismissed earlier this year.[6]

III. THE PCB CASE

In a case recently affirmed by the Sixth Circuit Court of Appeals, Rockwell International was allocated a zero share of the costs of cleaning up PCBs from the Kalamazoo River in Michigan. *Kalamazoo River Study Group v. Rockwell*, 274 F.3d 1043 (6th Cir. 2001). Rockwell and the plaintiff group, Kalamazoo River Study Group (KRSG), were found liable under CERCLA for contributing PCB-containing oils to the Kalamazoo River. During the allocation phase of the trial, the district court determined that "Rockwell's PCB contribution did not exceed background levels and would not in itself have resulted in a need for remediation of the Kalamazoo River." *KRSG v. Rockwell*, 107 F. Supp. 817, at 840, 51 ERC 1396 (W.D. Mich. 2000). The court further concluded that Rockwell's 20-pound PCB contribution was "very

[6] *Ninth Avenue Remedial Group v. White Consolidated Industries, Inc.*, Case No. 01-3688 (7th Cir., Jan. 24, 2002).

minimal" in contrast to the hundreds of thousands of pounds of PCBs contributed by members of the KRSG. *Id.* Emboldened by the Seventh Circuit's decision in *PMC v. Sherwin-Williams*, the district court concluded that a zero allocation was appropriate for Rockwell. *Id.* at 822, *citing PMC*, 151 F.3d at 616 and *Acushnet Co. v. Mohasco Corp.*, 191 F.3d 69, 78 (1st Cir. 1999).

The Sixth Circuit affirmed Rockwell's zero allocation on appeal. *KRSG v. Rockwell*, 274 F.3d at 1047. The court held open the door to zero allocations in the Sixth Circuit by stating, "A holding of potential liability does not preclude a zero allocation of response costs." *Id.* at 1047. As such, the district court's holding that Rockwell contributed measurable quantities of PCBs to the river did not obligate the court to allocate any response costs to that defendant. When relative volumes and toxicity were considered by the district court, it determined that KRSG was responsible for more than 99.9% of the PCBs in the river. In the absence of clear error by the district court, the Sixth Circuit affirmed that Rockwell "had released an inconsequential amount of PCBs" relative to KRSG and that the district court had adequately supported its zero allocation.

KRSG argued that Rockwell should at minimum pay a per capita share of the site investigation (RI/FS) costs. Investigation costs, they argued, were necessary even for small contributors like Rockwell in order to determine whether remedial actions were necessary. The Sixth Circuit found no support for a separate allocation of investigation costs under CERCLA. Instead, the Court deferred to the "broad discretion of the district court" to allocate response costs using any equitable factors it finds appropriate. *Id.* at 1048-49. Finally, the Court rejected Plaintiffs' contention that the Rockwell PCBs were particularly toxic, and that Rockwell's behavior was particularly recalcitrant. In the end, the Court determined that volume was the

appropriate basis for allocating cleanup costs among the participants and Rockwell's share of 0.01% was appropriately rounded to zero.

Rockwell, like WCI, needed a two-pronged basis to support its zero allocation. First, Rockwell prevailed in the battle of trial experts by convincing the Court that its discharge of PCBs "did not rise above background concentrations of PCBs in the river." *KRSG*, 107 F. Supp. at 827. The second prong was also critical to Rockwell's success. Rockwell produced undisputed evidence that the KRSG members were the overwhelming source of PCBs in the river. *Id.* at 840. With this evidence, Rockwell proved that its contribution was relatively inconsequential and zero damages were awarded.

IV. SHORTCUT TO ZERO

A zero allocation at the end of the final allocation phase of trial is a bittersweet victory. In both the Foundry Sand Case and the PCB Case, for example, the zero came after six years of costly litigation. *See also*, *Dent v. Beazer*, 156 F.3d 523 (4th Cir. 1998) (affirming a zero allocation for two third-party defendants after nine years of litigation). A zero allocation would be sweeter still at summary judgment. Based on the affirming reception from circuit courts, district court judges should not be reticent to consider zero allocations at earlier stages of litigation.

In *Acushnet v. Mohasco*, 191 F.3d 69 (1st Cir 1999), one defendant was allocated a zero share of cleanup costs at summary judgment. The district court had granted summary judgment on the basis that defendant NETT's contribution of telephone pole butts to the site did not cause the incurrence of response costs. While rejecting the linking of causation to a threshold quantity of hazardous waste, the First Circuit nonetheless held that the district court was free to allocate a

zero share, even at summary judgment, using its authority to fairly apportion costs under CERCLA § 113(f).

> [A]llowing a CERCLA defendant to prevail on issues of fair apportionment, even at the summary judgment stage, is consistent with Congress's intent that joint and several liability not be imposed mechanically in all cases.... In fact, to require an inconsequential polluter to litigate until the bitter end, we believe, would run counter to Congress's mandate that CERCLA actions be resolved as fairly and efficiently as possible.

Acushnet, 191 F.3d at 79. At summary judgment NETT introduced unrefuted expert evidence that the hazardous substances released from its telephone poles would be well below background levels in soils. The First Circuit held that a zero allocation is appropriate when a party "demonstrates that its share of hazardous waste deposited at the site constitutes no more than background amounts of such substances in the environment and cannot concentrate with other wastes to produce higher amounts." *Id.* at 77.

The Second and Third Circuits have also indicated their willingness to embrace zero allocations even at the summary judgment stage when a contribution does not rise above background concentrations present in the environment. *See United States v. Alcan Aluminum*, 990 F.2d 711, 36 ERC 1321 (2nd Cir. 1993) (*Alcan II*); *United States v. Alcan Aluminum*, 964 F.2d 252, 35 ERC 1073 (3rd Cir. 1992). The Second Circuit added that "the choice as to when to address divisibility and apportionment are questions best left to the sound discretion of the trial court in the handling of an individual case." *Alcan II*, 990 F.2d at 723. Summary judgment presents the first opportunity for defendants to introduce expert evidence that contributions do not rise above background concentrations. Plaintiffs, of course, have the opportunity to counter with their own expert evidence to create an issue of material fact that requires a trial to resolve.

Nonetheless, district courts have substantial discretion even at this early stage to apply equitable factors in coming to a final disposition regarding a defendant's equitable share.

V. CONCLUSION

The broad net of CERCLA liability has a safety valve: the unfettered equitable discretion of the district court to allocate cleanup costs. Circuit courts have consistently deferred to district court judges exercising their discretion to award zero allocations, even at summary judgment. Zero allocations are being awarded to parties whose contributions are too inconsequential to significantly affect cleanup costs. Inconsequential contributions, for some courts, are those with hazardous substance concentrations below background levels in the environment. Other courts have found contributions inconsequential when they are relatively small compared with the contributions of the parties seeking to recover cleanup costs. Still others insist upon a demonstration that the waste did not increase the marginal cost of cleanup. Taken together, zero allocations offer an opportunity for courts to inject fairness into a statutory system infamous for its draconian liability scheme.

11654157474

CORPORATE RECORDS & BUSINESS REGISTRATIONS

This Record Last Updated:	05/29/1998
Database Last Updated:	
Update Frequency:	SUSPENDED
Current Date:	10/19/2006
Source:	AS REPORTED BY THE SECRETARY OF STATE OR OTHER OFFICIAL SOURCE

COMPANY INFORMATION

Name:	BLAW-KNOX FOUNDRY & MILL MACHINERY, INC.
Address:	ONE OLIVER PLAZA PITTSBURGH, PA 15222

FILING INFORMATION

Identification Number:	00860300103200MPA
Filing Date:	03/03/1969
State of Incorporation:	DELAWARE
Status:	INACTIVE/MERGER
Corporation Type:	NOT AVAILABLE
Business Type:	CORPORATION
Address Type:	BUSINESS
Where Filed:	CORPORATIONS DIVISION 1900 KANAWHA BLVD E BLDG 1 RM 139W CHARLESTON, WV 25305

ADDITIONAL DETAIL INFORMATION

Additional Details:	LOCAL OFFICE ADDRESS IS: ONE OLIVER PLAZA PITTSBURGH PA 15222

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CA00565384

CORPORATE RECORDS & BUSINESS REGISTRATIONS

Database Last Updated:	10-17-2006
Update Frequency:	WEEKLY
Current Date:	10/19/2006
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COMPANY INFORMATION

Name:	BLAW-KNOX FOUNDRY & MILL MACHINERY, INC.
Care of Name:	WHITE CONSLDTED INDT
Address:	11770 BEREA RD CLEVELAND, OH 44111

FILING INFORMATION

Identification Number:	C0565384
Filing Date:	03/19/1969
State of Incorporation:	DELAWARE
Status:	SURRENDERED
Corporation Type:	PROFIT
Business Type:	CORPORATION
Where Filed:	SECRETARY OF STATE/CORPORATIONS DIVISION 1500-11TH STREET SACRAMENTO, CA 95814

AMENDMENT INFORMATION

Amendments:	02/23/1979 CERTIFICATE OF SURRENDER BY FOREIGN CORPORATION

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59696802893

CORPORATE RECORDS & BUSINESS REGISTRATIONS

This Record Last Updated:	09/03/2006
Database Last Updated:	10-16-2006
Update Frequency:	DAILY
Current Date:	10/19/2006
Source:	AS REPORTED BY THE SECRETARY OF STATE OR OTHER OFFICIAL SOURCE

COMPANY INFORMATION

Name:	BLAW-KNOX FOUNDRY & MILL MACHINERY, INC.
Address:	C/O C T CORP SYS 123 S BROAD ST PHILADELPHIA, PA 19109

FILING INFORMATION

Identification Number:	38704
Filing Date:	01/20/1969
State of Incorporation:	PENNSYLVANIA
Date Incorporated:	01/20/1969
Status:	WITHDRAWN
Corporation Type:	NOT AVAILABLE
Business Type:	CORPORATION
Address Type:	MAILING
Where Filed:	SECRETARY OF STATE/CORPORATIONS DIVISION 203 NORTH OFFICE BLDG HARRISBURG, PA 17120

AMENDMENT INFORMATION

Amendments:	02/13/1979 MISCELLANEOUS TERMINATION/WITHDRAWAL FOREIGN-BUSINESS 01/20/1969 MISCELLANEOUS CERTIFICATE OF AUTHORITY

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Experian Limited Report

As of:10/19/2006 14:04:46

Company Information

BLAW KNOX FOUNDARY & MILL MCHNRY

PO BOX 229

EAST CHICAGO, IN

Phone: 219-392-2152

Business Type: Unavailable

SIC Code/Description: 3300-PRIMARY METAL INDUSTRIES

Experian File Number:	A20628978
Experian File Established:	April 2004
Experian Years on File:	2 Years

Credit Summary

✓ **Bankruptcies:**	**0**
✓ **Liens:**	**0**
✓ **Judgments Filed:**	**0**
✓ **Collections:**	**0**

Key Facts

Sales:	$750,000
Number of Employees:	9
Years in Business:	More than 2 Years

Executive Summary

UCC Filings:	0

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Experian Limited Report

As of:10/19/2006 14:08:14

Company Information

BLAW KNOX CO

144TH RAILROAD AVE
EAST CHICAGO, IN 46312

Business Type: Unavailable

Experian File Number:	A00505534
Experian File Established:	Before January 1977
Experian Years on File:	More than 29 Years

Credit Summary

✓	**Bankruptcies:**	**0**
✓	**Liens:**	**0**
✓	**Judgments Filed:**	**0**
✓	**Collections:**	**0**

Key Facts

Years in Business:	More than 29 Years

Executive Summary

Payment Tradelines:	1
UCC Filings:	0

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Facility Mailing Addresses

Affiliation Type	Delivery Point	City Name	State	Postal Code	Information System
CONTACT/GENERAL	PO BOX 229	EAST CHICAGO	IN	46312	RCRAINFO
CONTACT/OPERATOR	ADDRESS NOT REPORTED	CITY NOT REPORTED	AK	99998	RCRAINFO

NAICS Codes

No NAICS Codes returned.

SIC Codes

Data Source	SIC Code	Description	Primary
ICIS	3325	STEEL FOUNDRIES, NOT ELSEWHERE CLASSIFIED	

Contacts

No Contacts returned.

Organizations

Affiliation Type	Name	DUNS Number	Information System	Mailing Address
CONTACT/OPERATOR	NAME NOT REPORTED		RCRAINFO	View

Alternative Names

Alternative Name	Source of Data
BLAW KNOX FOUNDRY AND MILL MCHY CO	ICIS

Query executed on: SEP-13-2006

Facility Detail Report

Report an Error

FRS

Facility Name:	BLAW KNOX FOUNDRY & MILL MACHINARY CO
Location Address:	4400 RAILROAD AVE
Supplemental Address:	
City Name:	EAST CHICAGO
State	IN
County Name:	LAKE
ZIP/Postal Code:	46312
EPA Region:	05
Congressional District Number:	01
Legislative District Number:	
HUC Code:	04040001
Federal Facility:	NO
Tribal Land :	NO
Latitude:	41.633701
Longitude:	-87.475884
Method:	ADDRESS MATCHING-HOUSE NUMBER
Reference Point Description:	PLANT ENTRANCE (GENERAL)
Duns Number:	
Registry ID:	110003068689

Map this facility

Environmental Interests

Information System	Information System ID	Environmental Interest Type	Data Source	Last Updated Date	Supplemental Environmental Interests:
ICIS	20811	FORMAL ENFORCEMENT ACTION	ICIS	03/06/1987	ICIS-05-1985-0425 FORMAL ENFORCEMENT ACTION
IN-FRS	330015662295	STATE MASTER	IN-FRS		
RCRAINFO	IND000130211	NOT IN A UNIVERSE	IMPLEMENTER	03/15/1992	